

A product manufacturer that purchases display racks that it gives to store owners to display the manufacturer's products does not incur tax on those purchases because they are purchases for resale. See, Boye Needle Co. v. Department of Revenue, 45 Ill.2d (484) (1970) and 86 Ill. Adm. Code 130.201(b). (This is a PLR.)

April 22, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 23, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY, we respectfully request that the Illinois Department of Revenue issue a private letter ruling pursuant to Ill. Admin. Code tit. 2, § 1200.110, stating that based on the facts set forth below, COMPANY's purchases of the display racks are exempt from sales and use tax.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department of Revenue (the 'Department');

2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax ('ROT') consequences of the actual business practice of COMPANY;
3. This situation is not being examined as part of a Department audit of COMPANY, nor is COMPANY currently engaged in litigation with the Department with regard to this or any other tax matter;
4. The Department has not previously ruled regarding this matter for COMPANY. Neither COMPANY nor FIRM has submitted the same or similar issue to the Department on behalf of COMPANY;
5. COMPANY requests that certain information be deleted from the PLR prior to dissemination to others. COMPANY requests that its name, address, the location of its facilities, description of products being sold, and the name of its representative be deleted; and
6. COMPANY knows of no authority contrary to the authorities referred to and cited below.

Facts:

The Company develops and manufactures toys for children. The Company sells its products to major retailers nationwide. The Retailers receive display racks from the Company at no additional cost to them in order to display COMPANY's products in their stores. There are no written agreements between the Company and the Retailers with regard to these display racks. The Retailers may dispose of the racks at will. Some of the display racks are equipped with demo units for consumers to test the products before purchase.

The display racks are purchased from few vendors, some located in Illinois and some located outside of Illinois. The Company paid Illinois sales/use tax on the purchases of the display racks to its vendors. The vendors shipped the display racks to a contracted distribution center that is located in Illinois. The distribution center ships the display racks to the retail stores nationwide.

Ruling Requested:

The Company respectfully requests that the Department issue a binding private letter ruling which confirms the Company is considered to be providing the display racks as part of the sale of its toy merchandise. As such, the Company may purchase the display racks from its vendors without incurring tax as a sale for resale, and may file a claim for refund for tax previously paid.

Legal Discussion:

Based on Boye Needle Co. v. Dept. of Revenue, 45 Ill.2d 484 (1970), the manufacturer may purchase the display merchandise without incurring tax as a sale for resale. Per 35 Ill. Comp. Stat. 120/1, a sale at retail is not defined to include sales for resale.

Conclusion

We respectfully request that the Illinois Department of Revenue confirm our conclusions as set forth above, regarding the application of Illinois sales and use tax laws with regard to COMPANY's purchases of these display racks, so that we may advise our client accordingly.

If the Department cannot reach our conclusions as set forth above, I request that the Department contact me to determine what additional information needs to be provided or allow the taxpayer to rescind the ruling request.

Please feel free to contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on these issues.

DEPARTMENT'S RESPONSE:

Based on the information you have provided, it is our opinion that sales of the display racks from vendors to COMPANY are not subject to Illinois Use Tax. The sale of these display racks is, rather, a sale for resale, and is consequently exempt from taxation. See 86 Ill. Adm. Code 130.201.

The provisions of Section 130.201(b) provide the basis for our determination. As you have explained in your letter, COMPANY pays for these display racks, has them shipped to a contracted distribution center in Illinois, and then has them shipped to stores nationwide so that COMPANY's products can be displayed in them. Your letter indicates that the stores may dispose of the racks at will. As Section 130.201(b) explains, when tangible personal property is transferred along with other goods for which a charge is made, that transfer is deemed a sale for resale. In this case, the transfer of the display racks from COMPANY to the stores, along with the transfer of COMPANY's products to the stores for which a charge is made, is deemed to be included in the sale of COMPANY's products for resale. Section 130.201(b) references the case of Boye Needle Co. v. Dept. of Revenue, 45 Ill.2d 484 (1970), which held that a manufacturer's purchase of a display case given to retailers for use in displaying the manufacturer's products was not subject to Use Tax because it was a sale for resale. We can see no difference between the situation you have described and that presented in Boye Needle.

In your letter you indicate that COMPANY paid sales/use tax to the vendors for the display racks. A claim for credit of tax paid in error must be filed by the taxpayer who actually paid the tax to the Department. In this instance, the claim for credit must be filed by the vendors. In order to receive a credit memorandum from the Department, the vendor must submit proof in support of the claim clearly establishing that the vendor has borne the burden of the tax erroneously paid or that he has unconditionally repaid the amount of the tax to his vendee from whom he has collected such amount. See 86 Ill. Adm. 130.1501 and 150.1401.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk